

FILED
AUG 04 2017
WASHINGTON STATE
SUPREME COURT

SUPREME COURT NO. 94826-7

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

GREGORY WRIGHT,

Petitioner.

ON DISCRETIONARY REVIEW FROM THE COURT OF APPEALS,
DIVISION TWO

Court of Appeals No. 48710-1-II
Clark County No. 15-1-00085-3

PETITION FOR REVIEW

CATHERINE E. GLINSKI
Attorney for Petitioner

GLINSKI LAW FIRM PLLC
P.O. Box 761
Manchester, WA 98353
(360) 876-2736

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A. IDENTITY OF PETITIONER

Petitioner, GREGORY WRIGHT, by and through his attorney, CATHERINE E. GLINSKI, requests the relief designated in part B.

B. COURT OF APPEALS DECISION

Wright seeks review of the June 20, 2017, unpublished decision of Division Two of the Court of Appeals affirming his convictions and sentence.

C. ISSUES PRESENTED FOR REVIEW

1. Where the State presented no evidence that Wright restrained the victim by secreting her in a place she was unlikely to be found or by the use or threatened use of deadly force, must his conviction of first degree kidnapping be reversed?

2. Wrights seeks review of the assertions of error in his statement of additional grounds for review.

D. STATEMENT OF THE CASE

Gregory Wright was convicted of first degree kidnapping and attempted second degree assault based on an incident that occurred in a mental health examination room at the Clark County Jail. The room was located in the medical unit, about 10 to 15 feet from a rover station where numerous corrections officers worked. RP 400. There was also an office directly across from the exam room for the corrections officer on duty for

the medical unit. RP 317-18, 412. The rover station had a big window so that the guards could look out over the whole area. RP 318. It was standard practice for the door to the exam room to be kept open while inmates met with mental health professionals. RP 315, 442. A closed door would catch the officers' attention. RP 366, 401, 413.

On January 13, 2015, Wright was in the exam room with Kristina Nystrom, a mental health therapist who worked at the jail, when corrections officers heard screaming. RP 308-09, 316, 364. There were four or five corrections officers in the rover station, and they immediately responded to the screams. RP 363-65, 415. Within about 15 seconds, officers had Wright restrained. RP 370-74, 377.

Nystrom testified that she spoke to Wright in the exam room for ten to 15 minutes. RP 322. She gave him suggestions for dealing with stress, and then Wright suddenly stood up and asked what she could do for him. RP 324. She thought Wright was going to leave, but instead he kicked out the door stop, pushed the door shut, and hit her in the face. RP 325. Nystrom fell backwards and landed on the floor. RP 326. She wanted to get out of the room, but Wright was standing between her and the door. RP 326. When she pushed herself up, Wright put probably one, but possibly two hands on her neck. RP 327, 337-38. Nystrom squirmed away, and Wright's hand disengaged. RP 327, 341. Nystrom testified that

she had never said she was strangled, her airway was not cut off, and she could not say that was Wright's intent. RP 339. After she wriggled away from Wright's hand, Wright tried moving the desk in front of the door, but he was not able to block the door because Nystrom threw herself against the desk. RP 327, 338. Wright grabbed the neck of Nystrom's sweater and tried to pull her over the desk, but again he was unsuccessful. RP 328. During the entire incident Nystrom was screaming loudly to get the guards to come, and they responded within seconds. RP 328-29, 348.

Following the incident Nystrom had minor injuries to her finger, elbow, and shin. She complained of pain to her face, but there were no visible injuries that night. RP 492-93. There was also a little bruise on one side of her neck. RP 546. Photos taken the next day showed a bruise above her jaw near the corner of her mouth. RP 678-79.

Wright spoke to a detective from the Sheriff's office after the incident. RP 660. He said he did not remember what happened in the exam room after he stood up to walk out. RP 956. He did not remember the door to the exam room being closed. RP 963. He said he never intended to hurt Nystrom. RP 966. Wright did not say Nystrom was lying, but he did not remember doing the things she said he did. RP 966-67.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. THE DEGREE OF PROOF NECESSARY TO ESTABLISH ABDUCTION, AS OPPOSED TO MERE RESTRAINT, FOR A CHARGE OF FIRST DEGREE KIDNAPPING IS AN ISSUE OF SUBSTANTIAL PUBLIC IMPORTANCE WHICH THIS COURT SHOULD REVIEW. RAP 13.4(b)(4).

In every criminal prosecution, the State must prove all elements of a charged crime beyond a reasonable doubt. U.S. Const. amend. 14; Const. art. 1, § 3; *In re Winship*, 397 U.S. 358, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970); *State v. Crediford*, 130 Wn.2d 747, 759, 927 P.2d 1129 (1996). Therefore, as a matter of state and federal constitutional law, a reviewing court must reverse a conviction and dismiss the prosecution for insufficient evidence where no rational trier of fact could find that all elements of the crime were proven beyond a reasonable doubt. *State v. Hickman*, 135 Wn.2d 97, 103, 954 P.2d 900 (1998); *State v. Hardesty*, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996); *State v. Chapin*, 118 Wn.2d 681, 826 P.2d 194 (1992); *State v. Green*, 94 Wn. 2d 216, 616 P.2d 628 (1980).

Wright was convicted of first degree kidnapping by intentionally abducting Nystrom with the intent to facilitate a felony or flight thereafter. CP 100, 183, 188; RCW 9A.40.020(1)(b). To establish that Wright abducted Nystrom, the State had to prove he restrained her “by either (a) secreting or holding ... her in a place where ... she is not likely to be

found, or (b) using or threatening to use deadly force.” RCW 9A.40.010(1). While there was evidence that Wright restrained Nystrom when he closed the door to the exam room and attempted to block it with the desk¹, the evidence did not establish that the restraint was by means constituting abduction.

Sufficient evidence of abduction was found in *State v. Saunders*, 120 Wn. App. 800, 86 P.3d 232 (2004). In that case, although the victim’s car was outside the defendant’s house and visible to the public, the evidence showed she was secreted in a place she was unlikely to be found because she was placed in leg shackles and handcuffs and her mouth was taped shut, and she was in private home where the public had no access to her and was not able to come to her aid. *Saunders*, 120 Wn. App. at 816.

Here, by contrast, the incident charged as kidnapping occurred in a medical exam room in the Clark County Jail. Corrections officers delivered Wright to the room and thus knew he was there with Nystrom, who worked at the jail. The room was approximately 15 feet from a rover station where numerous correctional officers were stationed to monitor the

¹ “‘Restrain’ means to restrict a person’s movements without consent and without legal authority in a manner which interferes substantially with his or her liberty. Restraint is “without consent” if it is accomplished by (a) physical force, intimidation, or deception, or (b) any means including acquiescence of the victim, if he or she is a child less than sixteen years old or an incompetent person and if the parent, guardian, or other person or institution having lawful control or custody of him or her has not acquiesced.” RCW 9A.40.010(6).

medical unit. Officers could see the hallway and walked past the exam room frequently. As a rule, the door to the exam room was kept open, so that a closed door would immediately draw the officers' attention. Under these circumstances, the State failed to prove Wright secreted or held Nystrom in a place she was not likely to be found. Indeed, the evidence shows that she was found within seconds of Wright closing the door.

The evidence also fails to establish that Wright restrained Nystrom by use or threatened use of deadly force. The court defined deadly force for the jury as "force which is the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury." CP 162; *see State v. Majors*, 82 Wn. App. 843, 846, 919 P.2d 1258 (1996). No firearm was involved in this case. Nor was there evidence that Wright used force reasonably likely to cause death or serious physical injury. Nystrom testified that Wright punched her and put his hand on her neck, but she sustained only minor injuries consisting of scrapes and bruises. Moreover, she was able to wriggle away from Wright so that his hand disengaged, and her airway was never constricted. The evidence also failed to establish any threat to use deadly force. The entire incident lasted less than one minute. Nystrom did not testify to any threat, and she said she did not know Wright's intent.

The State failed to present evidence that Wright abducted Nystrom, rather than merely restraining her. His conviction for first degree kidnapping must therefore be reversed and the charge dismissed.

2. THIS COURT SHOULD REVIEW ISSUES RAISED IN THE STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW.

Wright raised arguments in his statement of additional grounds for review which the Court of Appeals rejected. Those arguments are incorporated herein by reference.

F. CONCLUSION

For the reasons discussed above, this Court should grant review and reverse Wright's convictions and sentence.

DATED this 20th day of July, 2017.

Respectfully submitted,

GLINSKI LAW FIRM PLLC



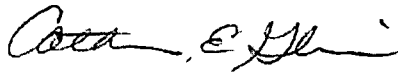
CATHERINE E. GLINSKI
WSBA No. 20260
Attorney for Petitioner

Certification of Service by Mail

Today I caused to be mailed a copy of the Petition for Review in
State v. Gregory Wright, Court of Appeals Cause No. 48710-1-II, as
follows:

Gregory Wright/#144943
c/o Clark County Jail
PO Box 1147
Vancouver, WA 98666

I certify under penalty of perjury of the laws of the State of Washington
that the foregoing is true and correct.



Catherine E. Glinski
Done in Manchester, WA
July 20, 2017

GLINSKI LAW FIRM PLLC

July 20, 2017 - 12:01 PM

Transmittal Information

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June 20, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

GEORGE ANTONIO WRIGHT,

Appellant.

No. 48710-1-II

UNPUBLISHED OPINION

LEE, J. — Gregory Antonio Wright appeals his convictions for first degree kidnapping and attempted second degree assault, arguing that the State presented insufficient evidence to establish the essential element of “abduction” in the charge of kidnapping. In a Statement of Additional Grounds (SAG), Wright asks us to review whether the State presented sufficient evidence to convict him of attempted second degree assault.

We hold that Wright’s sufficiency challenges to his convictions fail. Therefore, we affirm.

FACTS

Kristina Nystrom was a mental health therapist who provided therapy to inmates in the Clark County Jail. Nystrom met with Wright in the evening of January 13, 2015, in a private treatment room. A jail guard escorted Wright to the treatment room but did not enter the treatment room with Wright and Nystrom. The treatment room had chairs for the counselor and patient, “a big, heavy desk,” an exam table, and various medical books and supplies. 3 Verbatim Report of

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Proceedings (VRP) at 317. The room had no windows, but had “a heavy metal door” that was propped open and would automatically lock when closed. 3 VRP at 318. Across the hallway from the treatment room was a guard station.

Wright sat in the chair next to the door and talked with Nystrom for 10 to 15 minutes. Without warning, Wright angrily said something that sounded like, “Well, what can you do for me then” and stood up. 3 VRP at 324. “[I]n one motion[, Wright] kicked the doorstep out, pushed the door closed, and hit [Nystrom] in the face” with a closed fist. 3 VRP at 325. The punch knocked Nystrom to the ground.

Wright was positioned between Nystrom and the door. When Nystrom pushed herself back up, Wright came at her “with his hands and tried to put them around [her] neck.” 3 VRP at 327. Nystrom said, “[H]e ended up putting his hands around my neck,” but she “squirmed backwards and away.” 3 VRP at 327. Wright “started pulling the desk in front of the door to block the door from being opened.” 3 VRP at 327. Nystrom moved behind the desk to push it away, screaming loudly. Wright then reached over the desk for Nystrom, grabbed her sweater by the neck, and tried to pull her across the desk, stretching the neck of her sweater. At that point, Nystrom could hear the guards coming, but Wright had managed to move the desk in front of the door.

Officer Duncan Paddy was on duty at the guard station across the hall from the treatment room with several other law enforcement personnel when he heard Nystrom screaming. Initially, Officer Paddy and the other law enforcement personnel could not tell where the screaming was coming from, but they soon isolated the direction and realized the door to the treatment room was closed. It was not normal for the door to the treatment room to be closed. Officer Paddy knew the door would be locked, and he used the keys he had with him to unlock the door. He tried opening

the door slowly, but there was enough resistance that the door pushed closed again. Officer Paddy then hit the door with a lowered shoulder and the door “flew open.” 3 VRP at 371.

Upon entry, Officer Paddy lunged across the desk to secure Wright. Wright did not resist, and Officer Paddy was able to secure him against the exam table. Four other law enforcement personnel entered the room behind Officer Paddy. Officer Paddy testified that the time it took him to respond was no more than 15 seconds.

Although Wright was not successful in cutting off Nystrom’s trachea or her air passage, he touched her neck “forcefully” with “[t]he palm of his hand and his fingers and thumb. 3 VRP at 340. This contact left a bruise on Nystrom’s neck.

Nystrom testified that she was afraid for her life, and “I was so afraid I wet myself.” 3 VRP at 326. Nystrom was not sure how long the entire incident lasted, but she estimated about 30 seconds.

Wright was charged by amended information on February 1, 2016, with first degree kidnapping and attempted second degree assault. After trial, the jury found Wright guilty on both counts. The jury also found by special verdict that in committing kidnapping in the first degree, Wright intended to facilitate the commission of second degree assault or flight thereafter.

The trial court noted on the felony judgment and sentence that the attempted second degree assault conviction merged with the first degree kidnapping conviction. Wright was sentenced to 186 months. Wright appeals.

ANALYSIS

A. SUFFICIENCY OF THE EVIDENCE

Wright argues the State presented insufficient evidence to convict him of first degree kidnapping because the evidence failed to establish that his actions constituted an “abduction” of Nystrom. Br. of Appellant 5. In a Statement of Additional Grounds (SAG), Wright requests that we review the sufficiency of the evidence to convict him of attempted second degree assault. We hold that sufficient evidence supports Wright’s conviction on both counts.

Evidence is sufficient to support a conviction if, viewing the evidence in the light most favorable to the State, any rational trier of fact can find the essential elements of the crime beyond a reasonable doubt. *State v. Houston-Sconiers*, 188 Wn.2d. 1, 15, 391 P.3d 409 (2017). All reasonable inferences from the evidence are drawn in favor of the State and interpreted “most strongly” against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency “admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Houston-Sconiers*, 188 Wn.2d. at 15 (quoting *Salinas*, 119 Wn.2d at 201). Circumstantial and direct evidence are equally reliable. *State v. Moles*, 130 Wn. App. 461, 465, 123 P.3d 132 (2005), *review denied*, 157 Wn.2d 1019 (2006). We defer to the trier of fact on issues of conflicting testimony, witness credibility, and persuasiveness of the evidence. *State v. Fiser*, 99 Wn. App. 714, 719, 995 P.2d 107, *review denied*, 141 Wn.2d 1023 (2000).

1. First Degree Kidnapping

Wright argues that the evidence failed to show that his actions constituted “abduction” because the evidence did not show that he “secreted or held Nystrom in a place she was not likely to be found” nor did the evidence show that he “restrained Nystrom by use or threatened use of deadly force.” Br. of Appellant at 5-7. We hold that Wright’s challenge fails because the evidence presented was sufficient for any rational trier of fact to find beyond a reasonable doubt that Wright restrained Nystrom with threatened use of deadly force, thereby establishing the essential element of “abduction” to the kidnapping charge. *Houston-Sconiers*, 188 Wn.2d. at 15.

a. Legal principles

A person is guilty of kidnapping in the first degree when he or she “intentionally abducts another person with intent: . . . (b) [t]o facilitate commission of any felony or flight thereafter; or (c) [t]o inflict bodily injury on him or her.” RCW 9A.40.020(1). A person is abducted when he or she is restrained “by either (a) secreting or holding him or her in a place where he or she is not likely to be found, or (b) using or threatening to use deadly force.” RCW 9A.40.010(1). *See also State v. Berg*, 181 Wn.2d 857, 868, 337 P.3d 310 (2014) (“abduction can be proved in one of two ways: (1) restraint by secreting or holding a person where she is not likely to be found or (2) restraint by means of deadly force or threat of deadly force.”). A person is restrained where his or her movements are restricted “without consent and without legal authority in a manner which interferes substantially with his or her liberty.” RCW 9A.40.010(6). “Deadly force is force which is the intentional application of force through the use of firearms or any other means reasonably

likely to cause death or serious physical injury.” CP at 162 (unchallenged Jury Instruction 10a defining deadly force).

b. Restrained by Threatened Use of Deadly Force

Wright argues that the evidence presented did not establish “abduction” because the evidence did not show that he restrained Nystrom with use or threatened use of deadly force. Br. of Appellant at 5. In support, Wright points to what he did not do—he did not use a firearm, he did not restrict Nystrom’s airway, and he only inflicted scrapes and bruises. We disagree.

The fact that Wright did not use a firearm does not matter, as “one can threaten or use deadly force during a kidnapping without using a deadly weapon.” *State v. Lopez*, 142 Wn. App. 341, 348–49, 174 P.3d 1216 (2007), *review denied*, 164 Wn.2d 1012 (2008). Nor does it matter that he only inflicted scrapes and bruises and did not successfully restrict Nystrom’s airway, as “one does not have to have the actual capability to inflict deadly force in order to *threaten* to use it within the meaning of abduction.” *State v. Majors*, 82 Wn. App. 843, 847, 919 P.2d 1258 (1996), *review denied*, 130 Wn.2d 1024 (1997).

Here, viewed in the light most favorable to the State, the evidence showed that Wright closed the door causing it to lock and impede the officers on duty from coming to Nystrom’s aid, he stood between Nystrom and the door, and he moved the desk in front of the door to further impede the officers’ assistance. The evidence also showed that Wright (1) punched Nystrom in the face; (2) grabbed her neck with the palm, thumb, and fingers of his hands with enough force to leave bruising on her neck and she had to “squirm[] backwards and away” to get free; and (3) continued to reach for her neck, stretching the neck of her sweater. 3 VRP at 327. The evidence further showed Nystrom was afraid her life was in jeopardy. When viewed in the light most

favorable to the State, this evidence was sufficient to permit any rational trier of fact to find that Wright restrained Nystrom with threatened use of deadly force beyond a reasonable doubt. *Houston-Sconiers*, 188 Wn.2d. at 15; *Berg*, 181 Wn.2d at 868.¹

2. Attempted Second Degree Assault

In a SAG, Wright requests that we review the sufficiency of the evidence to convict him of attempted assault in the second degree. We hold that the State presented sufficient evidence to convict Wright of attempted second degree assault.

“A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime.” RCW 9A.28.020(1). A person is guilty of assault in the second degree if he or she, “[a]ssaults another by strangulation or suffocation.” RCW 9A.36.021(1)(g). “‘Strangulation’ means to compress a person’s neck, thereby obstructing the person’s blood flow or ability to breathe, or doing so with the intent to obstruct the person’s blood flow or ability to breathe.” RCW 9A.04.110(26).

¹ Wright also contends that the evidence did not establish “abduction” because the evidence did not show that he “secreted or held Nystrom in a place she was not likely to be found.” Br. of Appellant at 5-6. As explained above, “abduction can be proved in one of two ways: (1) restraint by secreting or holding a person where she is not likely to be found or (2) restraint by means of deadly force or threat of deadly force.” *Berg*, 181 Wn.2d at 868. Thus, because we hold that the evidence was sufficient to permit any rational trier of fact to find that Wright restrained Nystrom with threatened use of deadly force beyond a reasonable doubt, we do not address this argument.

Here, the evidence showed that Wright grabbed Nystrom's neck with the palm, thumb, and fingers of his hands with enough force that he left bruising on her neck. From the evidence describing Wright's actions and Nystrom's bruising, a rational trier of fact could reasonably infer that Wright compressed Nystrom's neck and obstructed sufficient blood flow to cause bruising.

The evidence further showed that after Nystrom "squirmed backwards and away," Wright continued to reach for her neck, causing the neck of her sweater to stretch. 3 VRP at 327. From this evidence, a rational trier of fact could reasonably infer that Wright intended to strangle Nystrom.

Therefore, admitting the truth of this evidence and the reasonable inferences that can be drawn from it in favor of the State, any rational trier of fact could find beyond a reasonable doubt that Wright intended to compress Nystrom's neck and obstructed, or intended to obstruct, her blood flow or ability to breathe. RCW 9A.04.110(26), RCW 9A.28.020(1), RCW 9A.36.021(1)(g); *Houston-Sconiers*, 188 Wn.2d. at 15. We hold that the State presented sufficient evidence to convict Wright of attempted second degree assault.

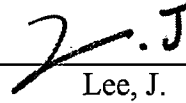
B. APPELLATE COSTS

Wright requests that we decline to impose appellate costs against him if the State prevails on this appeal and makes a proper request. The State responds by stating that it does not intend to seek costs if it prevails on this appeal. Accordingly, appellate costs will not be imposed.

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We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

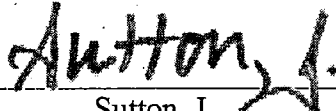


Lee, J.

We concur:



Maxa, A.C.J.



Sutton, J.